

nually in the possession of the late *John Hook*, and those who have succeeded to and claim under him ever since the year 1797. They have protected it, relieved it from burthens and charges, and have placed upon some parts of it lasting improvements. It now, therefore, only remains to apply the rules of equity in relation to these matters, and to direct how the accounts shall be taken.

If a mortgagee, without the assent of the mortgagor, assigns the mortgaged estate to an insolvent person, who he puts into possession, he will be held answerable for the rents and profits received both before and after the assignment. Upon the principle of its being a wilful breach of trust to transfer the property to another; which, as trustee, he had no right thus to dispose of to the prejudice of the mortgagor. (*k*) A trustee is, in no case, to be charged with imaginary values; but only with what he actually receives. And the same rule applies to a mortgagee in possession, who is regarded as a trustee. But no default must be imputed to him; for, in all such cases, he will be charged with what he might have made, but for his default. The annual value is that which the premises are actually worth net, according to a fair estimate, clear of all necessary charges.

Under the head of just allowances, it has long been the course of the court, to allow a trustee, or mortgagee, in possession, for all necessary expenses incurred for the defence, relief, protection, and repairs of the estate; such as costs of suit, and fees for taking opinions and procuring directions necessary for the due execution of the trust; (*l*) taxes, paving contributions, ground rent, and sums expended in necessary repairs. (*m*) It has been also said, and I think with justice, that when a mortgagee, thinking himself absolutely entitled, had expended considerable sums in repairs and lasting improvements, he should be allowed the value of them. (*n*) In a modern case, the value of new buildings, erected by the mortgagee, was allowed. (*o*) And a liberal allowance for the improved value of slaves while in the possession of the mortgagee was directed to be made. (*p*) The grounds of these decisions appear to be that a mortgagee in possession is the legal holder of the estate; which the mortgagor may at any time redeem; and so prevent him from making any repairs or improvements; and if the

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(*k*) *Powel Mortg.* 948; 2 *Fonb. Eq.* 179.—(*l*) *Fearns v. Young*, 10 *Ves.* 184; *Willis on Trustees*, 123, 147; *Lewin on Trusts*, 452, 456; *Jones v. Stockett*, 2 *Bland*, 417.—(*m*) *Powel Mortg.* 956, n.; *Balsh v. Hyham*, 2 *P. Will.* 455.—(*n*) *Powel Mortg.* 956, n.—(*o*) *Hardy v. Reeves*, 4 *Ves.* 482.—(*p*) *Ross v. Norvall*, 1 *Wash.* 14.